

# FACT SHEET: THE FAIRNESS ACT

## Title I — Equal Access to Public Services and Fair Treatment for the Military

- **Enhances protections against discrimination in federally funded services.**

The bill confirms that individuals may obtain relief under Title VI of the Civil Rights Act of 1964 (“VI”), Title IX of the Education Amendments of 1972 (“Title IX”), and the Age Discrimination Act of 1975 from practices in federally funded programs that have an unjustified discriminatory effect. These provisions clarify the law in response to Alexander v. Sandoval, 532 U.S. 275 (2001), which held that there is no private right of action to enforce Title VI regulations forbidding practices that have an unjustified discriminatory effect on the basis of race, national origin, or color.

- **Protects state employees who serve in the military from discrimination based on their military status.**
- **Provides students with necessary protections from harassment based on race, gender, national origin, color, and disability.**

Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998), erected new hurdles to students’ harassment claims by holding that core remedies are unavailable unless the school or university acted with “deliberate indifference” after receiving “actual notice” of unlawful harassment. This bill ensures that students who suffer harassment may obtain full remedies when a school shields itself from knowledge of unlawful harassment.

- **Ensures significant and effective remedies to deter discrimination.**

In Barnes v. Gorman, 536 U.S. 181 (2002), the Supreme Court held that punitive damages are unavailable for intentional violations of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The bill clarifies that punitive damages are available for intentional discrimination under Title VI, the Age Discrimination Act of 1975, the Rehabilitation Act, and Title IX.

## Title II — Protection for Older Workers

- **Provides appropriate remedies for all victims of age discrimination in employment, including state employees.**

Kimel v. Fla. Bd of Regents, 528 U.S. 62 (2000), held that state sovereign immunity bars claims against states by employees for damages under the Age Discrimination in Employment Act. This bill confirms the intent of Congress to protect state workers from age discrimination.

- **Confirms that older workers may seek relief from practices that have unjustifiable discriminatory effect based on age.**

### **Title III — Access to the Courts and Effective Remedies**

- **Prevents employers from forcing workers to sign away their right to a day in court.**

Circuit City Stores v. Adams, 532 U.S. 105 (2001), held that employers may require workers to arbitrate employment discrimination and unfair labor disputes in order to obtain a job. The bill prohibits employers from forcing workers to sign mandatory arbitration clauses surrendering their right to bring discrimination and labor claims to court.

- **Provides victims of discrimination based on sex, disability or religion with remedies equal to those available for other forms of discrimination.**
- **Ensures appropriate and effective remedies.**

The bill allows victims of discrimination and other unfair practices to recover attorney's fees and expert witness fees in appropriate cases. This provision responds to Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources, 532 U.S. 598 (2001) (holding that victims of unlawful treatment may not recover attorney's fees in civil rights cases under 42 U.S.C. § 1988, even if their cases provide the "catalyst" for defendant's change of conduct *unless* there is a court judgment), and West Virginia Univ. Hosp. v. Casey, 499 U.S. 83 (1991) (holding that there is no right to recover expert witness fees under section 1988).

### **Title IV — Equal Pay for Equal Work**

- **Enhances enforcement of the Equal Pay Act.**

### **Title V — Fair Treatment for Workers**

- **Confirms Congress' intent that all workers have adequate remedies for unfair labor practices.**

The bill ensures that all workers, including state workers and undocumented workers, may obtain relief for unfair labor practices. It responds to Alden v. Maine, 527 U.S. 706 (1999), which held that workers may not seek relief in state court when a state violates the Fair Labor Standards Act, and Hoffman Plastic Compounds v. NLRB, 535 U.S. 137 (2002), which denied lost wages to an undocumented worker illegally fired for joining a union.